

UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

LAWRENCE LODER, *et al.*,

No. C 11-00053 LB

Plaintiffs,

v.

WORLD SAVINGS BANK, *et al.*,

Defendants.

**ORDER CONTINUING MARCH 17,
2011 HEARING ON DEFENDANTS'
MOTION TO DISMISS AND MOTION
TO STRIKE AND DIRECTING
PLAINTIFFS TO SERVE OR DISMISS
5 STAR REAL ESTATE
INVESTMENTS BY MARCH 31, 2011**

Plaintiffs Lawrence and Nancy Loder filed a complaint in this case on November 30, 2011 against Defendants World Savings Bank, N.A., Wells Fargo Bank, N.A., and 5 Star Real Estate Investments. Complaint, ECF No. 1 at 6-36. On January 5, 2011, World Savings and Wells Fargo removed the case from Marin County Superior Court. Notice of Removal, ECF No. 1 at 1-3. World Savings and Wells Fargo filed a motion to dismiss Plaintiffs' complaint and a motion to strike portions of Plaintiffs' complaint on January 12, 2011 and noticed the motions for March 17, 2011. Motion to Dismiss, ECF No. 4; Motion to Strike, ECF No. 5.

On January 13, 2011, the court issued an order requiring the parties to file their consents or declinations to the court's jurisdiction by January 27, 2011. 1/13/11 Order, ECF No. 7. Plaintiffs, World Savings, and Wells Fargo have consented to the court's jurisdiction. *See* ECF Nos. 9-10. However, Plaintiffs have not filed a proof of service showing that they have served 5 Star Real Estate Investments and it has not appeared in this case. Plaintiffs filed their complaint on November 30, 2010 so they have until March 30, 2011 to serve 5 Star Real Estate Investments. *See* Fed. R.

1 Civ. P. 4(m) (plaintiffs have 120 days within which to serve defendants). Accordingly, the court
2 **HEREBY CONTINUES** oral argument on World Savings and Wells Fargo's motion to dismiss and
3 motion to strike to April 7, 2011 at 11:00 a.m. The existing briefing schedule will remain in effect:
4 Plaintiffs' opposition is due February 24, 2011 and World Savings Bank and Wells Fargo's optional
5 reply is due March 3, 2011.

6 Plaintiffs are **HEREBY ORDERED** to file a proof of service indicating that they have served 5
7 Star Real Estate Investments by March 31, 2011. If they fail to provide such proof, the court will
8 dismiss 5 Star Real Estate Investments without prejudice. In the alternative, if Plaintiffs do not wish
9 to pursue their claims against 5 Star Real Estate Investments, they shall file a notice of voluntary
10 dismissal dismissing it from the case by March 31, 2011. If Plaintiffs need an extension of time to
11 serve 5 Star Real Estate Investments, they may file a motion for such an extension by March 17,
12 2011. The court will only grant an extension if Plaintiffs demonstrate good cause for their failure to
13 serve.

14 **IT IS SO ORDERED.**

15 Dated: February 11, 2011



16 LAUREL BEELER
17 United States Magistrate Judge
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